



## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS-R2-ES-2021-0054; FF09E22000 FXES1113090FEDR 223]

RIN 1018–BE43

### Endangered and Threatened Wildlife and Plants; Removing the Braken Bat Cave Meshweaver from the List of Endangered and Threatened Wildlife

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), are removing the Braken Bat Cave meshweaver (*Cicurina venii*), an arachnid, from the Federal List of Endangered and Threatened Wildlife (i.e., “delisting” the species) under the Endangered Species Act of 1973, as amended (Act), because of a taxonomic revision. This determination is based on our evaluation of the best available scientific and commercial information, which indicates that the Braken Bat Cave meshweaver is not a discrete taxonomic entity and does not meet the definition of a species as defined under the Act. The reason it does not meet the definition of a species is that the original data for classification of the Braken Bat Cave meshweaver when it was listed was in error. Braken Bat Cave meshweaver has been synonymized with Madla Cave meshweaver (*Cicurina madla*). Therefore, due to a taxonomic revision, Braken Bat Cave meshweaver is no longer a scientifically accepted species and cannot be listed under the Act. However, because individuals previously identified as Braken Bat Cave meshweaver have been synonymized under Madla Cave meshweaver, their status and protections under the Act remain the same because the Madla Cave meshweaver is listed as endangered under the Act.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF

PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** The proposed rule and this final rule are available on the internet at <https://www.regulations.gov>. Comments and materials we received, as well as supporting documentation we used in preparing this rule, are available for public inspection at <https://www.regulations.gov> at Docket No. FWS-R2-ES-2021-0054.

**FOR FURTHER INFORMATION CONTACT:** Catherine Yeargan, Acting Field Supervisor, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, TX 78758; by telephone at 512–490–0057. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

#### **SUPPLEMENTARY INFORMATION:**

##### **Previous Federal Actions**

On September 30, 2021, we published a proposed rule (86 FR 54145) to remove Braken Bat Cave meshweaver from the Federal List of Endangered and Threatened Wildlife (i.e., to delist the species). Please refer to that proposed rule for a detailed description of previous Federal actions concerning this species. The proposed rule and supplemental documents are provided at <https://www.regulations.gov> under Docket No. FWS-R2-ES-2021-0054.

##### **Peer Review**

In accordance with our policy, “Notice of Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities,” which was published on July 1, 1994 (59 FR 34270) and our August 22, 2016, Director’s Memorandum “Peer Review Process,” we sought the expert review of our September 30, 2021, proposed rule to delist the Braken Bat Cave meshweaver (86 FR 54145). We sent the proposed rule to three

independent peer reviewers and received two responses. We also sent the rule to one partner reviewer and received a response. The purpose of such review is to ensure that our decisions are based on scientifically sound data, assumptions, and analysis.

### **Summary of Changes from the Proposed Rule**

In preparing this final rule, we reviewed and fully considered comments on our September 30, 2021, proposed rule (86 FR 54145). We did not receive substantial additional information during the comment period, and therefore we did not make any changes from the proposed rule in this final rule.

### **Background**

#### *Regulatory Framework*

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species is an endangered species or a threatened species. On July 5, 2022, the U.S. District Court for the Northern District of California vacated regulations that the Service (jointly with the National Marine Fisheries Service) had promulgated in 2019 (*Center for Biological Diversity v. Haaland*, No. 4:19-cv-05206-JST, Doc. 168 (*CBD v. Haaland*)). As a result of that vacatur, regulations that were in effect before those 2019 regulations now govern listing and critical habitat decisions. Our analysis for this decision applied those pre-2019 regulations. However, given that litigation remains regarding the court's vacatur of those 2019 regulations, we also undertook an analysis of whether the decision would be different if we were to apply the 2019 regulations. We concluded that the decision would have been the same if we had applied the 2019 regulations. The analysis based on the 2019 regulations is included in the decision file for this decision.

#### *Species Information and Biology*

The Braken Bat Cave meshweaver is a small, troglobitic (cave-dwelling) spider that inhabits caves and mesocaverns (humanly impassable voids in karst limestone) in

Bexar County, Texas. Because the Braken Bat Cave meshweaver is restricted to the subterranean environment, individuals exhibit morphological adaptations to that environment, such as elongated appendages and loss or reduction of eyes and pigment (Service 2011b, p. 2).

#### *Habitat and Distribution*

Habitat for the Braken Bat Cave meshweaver includes karst-forming rock containing subterranean spaces (caves and connected mesocaverns) with stable temperatures, high humidities (near saturation), and suitable substrates (for example, spaces between and underneath rocks for foraging and sheltering) that are free of contaminants (Service 2011b, p. 2). Although the Braken Bat Cave meshweaver spends its entire life underground, its ecosystem is dependent on the overlying surface habitat (Service 2011b, p. 2). Examples of nutrient sources include leaf litter that has fallen or washed in, animal droppings, and animal carcasses. Individuals require surface and subsurface sources (such as plants and their roots, fruits, and leaves, and animal (e.g., cave cricket) eggs, feces, and carcasses) that provide nutrient input into the karst ecosystem (Service 2011a, p. 6).

The Braken Bat Cave meshweaver is known from only two caves in the Culebra Anticline karst fauna region. One is located on private property, and the other occurs on a highway right-of-way. The species was first collected in 1980 and 1983 in Braken Bat Cave, but the cave itself was not initially described until 1988 (Reddell 1993, p. 38). The cave entrance was filled during construction of a home in 1990. Without excavation, it is difficult to determine what effect this incident had on the Braken Bat Cave meshweaver; however, there may still be some nutrient input, from a reported small side passage. The remaining location was discovered in 2012, during construction of State Highway 151 in San Antonio, Texas. Originally a void with no entrance, that feature was capped with concrete and the soil and vegetation above it was restored to the extent possible.

Threats to the Braken Bat Cave meshweaver and its habitat include destruction and/or deterioration of habitat by construction; filling of caves and karst features; increase of impermeable cover; contamination from septic effluent, sewer leaks, run-off, pesticides, and other sources; predation by and competition with nonnative fire ants; and vandalism (65 FR 81419; December 26, 2000).

### *Taxonomy*

Spider taxonomy generally relies largely on genitalic differences in adult specimens to delimit species (Paquin and Hedin 2004, p. 3240; Paquin *et al.* 2008, p. 139; Paquin and Dupérré 2009, p. 5). Delimiting troglobitic *Cicurina* species in particular is difficult not only because of the inaccessibility of their habitat for gathering adequate samples (Moseley 2009, pp. 47–48), but because most collections return immature specimens (Gertsch 1992, p. 80; Cokendolpher 2004, p. 15; Paquin and Hedin, 2004, p. 3240; Paquin *et al.* 2008, p. 140; Paquin and Dupérré 2009, p. 5). In addition, the few adults that are collected are disproportionately female (Cokendolpher 2004, pp. 14, 15, 17–18; Paquin and Dupérré 2009, p. 5). As females of troglobitic *Cicurina* exhibit variability in genitalic characters within and between caves, this makes it difficult to determine whether an individual represents a distinct species or intraspecific variation based on morphology alone (Cokendolpher 2004, pp. 30–32; Paquin and Duperre 2009, pp. 5–6; Paquin *et al.* 2008, pp. 140, 143, 147; Paquin and Dupérré 2009, pp. 4–6, 63–64).

The Braken Bat Cave meshweaver and Madla Cave meshweaver were originally described in 1992, from single female specimens found in Braken Bat Cave and Madla's Cave, respectively (Gertsch 1992, pp. 109, 111). These species were two of only four cave-dwelling spiders of the genus *Cicurina* described from Bexar County at the time (Gertsch 1992, p. 98) and were differentiated based on their geographic location and

specific morphological characters of the females (Gertsch 1992, pp. 84, 109, 111; Cokendolpher 2004, pp. 26, 43, 52).

Various genetic data were combined to address species delimitation questions in troglobitic *Cicurina* species, including the Braken Bat Cave meshweaver (Hedin *et al.* 2018, entire). Analysis of the evolutionary history of the species using genetics (phylogenomics) revealed two lines of ancestry, both of which are eyeless and correspond to groups previously described based on female morphology and troglobitic (cave-dwelling) adaptations, specifically the shape of the female sperm storage organ and the ratio of leg length to body length (Hedin *et al.* 2018, pp. 55, 61, 63–64; Cokendolpher 2004, p. 18; Paquin and Dupérré 2009, p. 9). Although the type specimen for the Braken Bat Cave meshweaver was not included in the genetics portion of the study because DNA could not be collected due to age, newly discovered specimens from the same geographic region with similar morphology to the Braken Bat Cave meshweaver placed it in the Madla Cave meshweaver clade genetically (Hedin *et al.* 2018, pp. 56–57; Hedin *et al.* 2018, p. 67).

Therefore, based on similarity of morphologic characteristics and mitochondrial and nuclear DNA results, Braken Bat Cave meshweaver was synonymized under Madla Cave meshweaver (Hedin *et al.* 2018, p. 68). This synonymy was accepted by the World Spider Catalog (World Spider Catalog 2019). Please refer to the Bexar County Karst Invertebrates Recovery Plan (2011), the Bexar County Karst Invertebrates 5-year Review (2011), and the Madla Cave Meshweaver 5-year Review (2019) for more information.

### **Summary of Comments and Recommendations**

In the September 30, 2021, proposed rule (86 FR 54145), we requested that all interested parties submit written comments on or before November 29, 2021. We also contacted appropriate State agencies and scientific experts and invited them to comment on the proposed rule. A newspaper notice inviting general public comment was published

in the San Antonio Express-News' legal notices section on October 14, 2021. Although we invited requests for a public hearing in the rule, we did not receive any requests for a public hearing.

#### *Peer Reviewer Comments*

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review actions under the Act, we sought the expert opinions of three specialists with expertise in the biology, habitat, and threats to the Braken Bat Cave meshweaver. We received responses from two experts. Both peer reviewers agreed that the Braken Bat Cave meshweaver should be delisted because it is no longer a taxonomically valid species and should be synonymized with the Madla Cave meshweaver. They did not provide any additional substantial information that would result in a change from the proposed rule.

#### *State Agency Comments*

We received one comment from Texas Parks and Wildlife Department that supported our determination to delist the Braken Bat Cave meshweaver. The agency did not provide any further substantive information.

#### *Public Comments*

We received four public comments during the comment period in response to the proposed rule. We reviewed all comments we received during the public comment period for substantive issues and new information regarding the proposed rule. None of the comments we received included new information concerning the proposed delisting of the Braken Bat Cave meshweaver. Two commenters supported our proposal to delist the Braken Bat Cave meshweaver, and the other two comments did not address or provide any information concerning the Braken Bat Cave meshweaver's delisting. We did not receive any comments opposing the proposed rule. Because all of the public comments

we received did not provide any new or substantial information or pose questions to be addressed, they do not warrant an explicit response in this rule.

### **Delisting Determination**

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for listing species on, reclassifying species on, or removing species from the Federal Lists of Endangered and Threatened Wildlife and Plants. The Act defines “species” as including any species or subspecies of fish or wildlife or plants, and any distinct population segment of vertebrate fish or wildlife that interbreeds when mature (16 U.S.C. 1532(16)). Our regulations at 50 CFR 424.11 identify three reasons why we might determine that a listed species is neither an endangered species nor a threatened species: (1) The species is extinct; (2) the species has recovered; or (3) the original data or interpretations of the data used at the time the species was classified were in error. Here, we have determined that the Braken Bat Cave meshweaver was listed based on data or interpretations of data that were in error; therefore, we are delisting it. Consideration of the Recovery Criteria for the Braken Bat Cave meshweaver is not appropriate because it was delisted based on a previous taxonomic classification error. Both the Braken Bat Cave meshweaver and the Madla Cave meshweaver are covered under the Bexar County Karst Invertebrates Recovery Plan (Service 2011, entire); the Braken Bat Cave meshweaver will now be addressed under that recovery plan as the Madla Cave meshweaver (16 U.S.C. 1533(g)(1)).

### **Effects of This Rule**

This final rule revises 50 CFR 17.11(h) by removing the Braken Bat Cave meshweaver from the Federal List of Endangered and Threatened Wildlife. However, because the Braken Bat Cave meshweaver has been synonymized under the Madla Cave meshweaver, its status, and thus its protections under the Act, remain the same because the Madla Cave meshweaver is listed as endangered, wherever it is found, under the Act.

The additional Braken Bat Cave meshweaver localities were included in the Madla Cave meshweaver 5-year review and did not change the endangered status of the Madla Cave meshweaver species (Service 2019, p. 17).

Unit 15, the area surrounding Braken Bat Cave, was designated as critical habitat for Braken Bat Cave meshweaver in 2012 (77 FR 8450; February 14, 2012). Because Braken Bat Cave meshweaver has designated critical habitat, this rule also amends 50 CFR 17.95(g) to remove the Braken Bat Cave meshweaver's designated critical habitat. This area has not yet been evaluated to determine if it is essential to the conservation of the Madla Cave meshweaver. Should we evaluate it in the future and determine that it is essential for the conservation of the Madla Cave meshweaver, proposing this unit as critical habitat for Madla Cave meshweaver would be completed in a subsequent rulemaking. Unit 15, however, is also critical habitat for an endangered beetle with no common name, *Rhadine infernalis*. Therefore, Unit 15 will retain the protections of the Act as designated critical habitat for *R. infernalis*.

### **Required Determinations**

#### *National Environmental Policy Act (42 U.S.C. 4321 et seq.)*

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with determining a species' listing status under the Endangered Species Act. We published a notice outlining our reasons for this determination in the *Federal Register* on October 25, 1983 (48 FR 49244).

#### *Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments),

and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We do not expect any Tribes to be affected by this delisting because there are no Tribal lands in or near the range of the Braken Bat Cave meshweaver. Additionally, we did not receive any comments from any Tribes or Tribal members on the proposed rule (86 FR 54145; September 30, 2021).

### **References Cited**

A complete list of references cited in this rulemaking is available on the internet at <https://www.regulations.gov> and upon request from the Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

### **Authors**

The primary authors of this rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Austin Ecological Services Field Office.

### **List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

### **Regulation Promulgation**

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

### **PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS**

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 1531-1544; 16 U.S.C. 4201-4245, unless otherwise noted.

**§ 17.11 [Amended]**

2. In § 17.11, at paragraph (h), amend the List of Endangered and Threatened Wildlife by removing the entry for “Meshweaver, Braken Bat Cave” under ARACHNIDS.

**§ 17.95 [Amended]**

3. In § 17.95, amend paragraph (g) by removing the entry for “Braken Bat Cave Meshweaver (*Cicurina venii*)”.

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**Martha Williams,**  
*Director,*  
*U.S. Fish and Wildlife Service.*

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